

REMARKS

It is noted that the claim amendments herein are intended solely to more particularly point out the present invention for the Examiner, and not for distinguishing over the prior art or the statutory requirements directed to patentability.

It is further noted that, notwithstanding any claim amendments made herein, Applicant's intent is to encompass equivalents of all claim elements, even if amended herein or later during prosecution.

Claims 1-27, all of the claims pending in the present Application, stand rejected under 35 USC §103(a) as unpatentable over US Patent 6,006,264 to Colby et al., further in view of US Patent 6,341,309 to Vaid et al.

These rejections are respectfully traversed in view of the following discussion.

I. THE CLAIMED INVENTION

As described and claimed, for example by claim 1, the present invention is directed to a method of controlling and guaranteeing a service level agreement (SLA) based on a communications outbound link bandwidth usage to a plurality of customers having electronic business activity hosted by at least one server as a server farm.

Outbound communications bandwidth usage by each customer traffic is monitored to determine a level of service being provided to each customer with respect to the agreed service level agreement in each service cycle time per unit of time. A flow of incoming requests to each customer business activity application is controlled so as to guarantee a level of service previously agreed to the customer by queuing and by selectively dropping requests to the customer to guarantee the agreed service levels to said customer. The controlling controls and guarantees each outbound link usage based service level agreement by controlling the flow of incoming requests to a server or group of servers.

An important advantage of the present invention is that it provides a closed loop for each customer's traffic, as based on the service level agreement for that customer, rather than controlling traffic for generic classes of traffic.

II. THE PRIOR ART REJECTION

The Examiner alleges that US Patent 6,006,264 to Colby et al., further in view of US Patent 6,341,309 to Vaid et al., renders as obvious the present invention as defined by claims 1-27.

The Examiner alleges that Colby teaches all aspects of the present invention except that the SLA is not based on the outbound link bandwidth usage by the customers. To overcome this conceded deficiency, the Examiner relies on Vaid.

Applicants submit that the rejection of record fails to meet the Examiner's initial burden because the Examiner seemingly fails to understand the significance of the wording of the independent claims. That is, taking claim 1 as an example, a key aspect of the present invention is that each customer's current traffic is monitored as based on that customer's SLA. Adjustments are made to each customer's incoming traffic if the amount of that customer's outbound traffic exceeds the amount specified in the SLA.

Neither Colby nor Vaid teaches or suggests the individual closed-loop for each customer, as taught in the present invention.

That is, in spite of the Examiner's characterization, Colby does not have the single deficiency identified by the Examiner. Rather, Colby teaches a content-aware flow switch 110 that evaluates the content of incoming customer requests in order to decipher which server to best handle the request (see Abstract and column 5, beginning at line 43). This concept is entirely different from the present invention defined in claim 1.

In order to teach or suggest the invention defined by claim 1, Colby would have to be modified in at least the following ways:

1. Colby would have to monitor outgoing traffic for each customer; and
2. Colby would have to consult the SLA for each customer and regulate incoming traffic from each customer as based on the individual customer's SLA.

Colby cannot be modified for either one of the two above necessary modifications by a secondary reference, such as Vaid, since such modification(s) would change entirely the purpose of the primary reference. That is, such modification would be prohibited by the following MPEP §2143.01 guidelines: "The proposed modification cannot render the prior

art unsatisfactory for its intended purpose" and "The proposed modification cannot change the principle of operation of a reference".

First, if Colby were to be modified to monitor outgoing traffic (instead of incoming requests), the entire purpose of Colby would be defeated, since the content-aware flow switch 110 evaluates incoming requests in order to direct the request to the most appropriate server, not to control the amount of incoming traffic in accordance with a SLA.

Second, as best understood, the Examiner attempts to equate the "Quality of Service (QoS) requirements" of Colby to the service level agreements (SLAs) of the present invention. However, the Colby QoS is not at all an agreement between the service provider and each customer. That is, as clearly described in column 9, beginning at line 33, and demonstrated in Table 1, the QoS is an entirely different concept in which eight categories of applications are used to define generic service requirements.

There is no suggestion in Colby to regulate incoming traffic as based on a service level agreement with each customer, as required by the claim language.

In the rejection currently of record, the Examiner attempts to combine Vaid with Colby so that outbound traffic is monitored in Colby. The Examiner alleges that such combination is obvious "... in order to better manage the bandwidth usage [Vaid, col. 2, lines 38-44]." There are several problems with this attempted merger.

First, Vaid teaches using a firewall to implement "quality of service management" (column 2 at lines 40-44). In contrast, Colby uses a "content-aware flow switch", which is not a firewall. Incorporating a firewall into Colby would drastically change the principle of operation of the primary reference Colby and would, therefore, be prohibited under the above- cited MPEP guidelines.

Second, the Examiner's motivation to combine references is merely a description of the purported result in the secondary reference Vaid, taken entirely out-of-context from the environment of Colby. That is, the Examiner's motivation is, at best, a conclusory statement of the supposed result if the combination were to be made.

This logic is entirely different from that required in patentability evaluation in which the prior art itself must suggest making the modification or combination. Vaid does not in

any way suggest incorporating a firewall technique into an environment such as described in Colby.

It is the Examiner who makes this suggestion, and this suggestion is based on words taken out of context. Such reasoning is clear evidence of impermissible hindsight.

Finally, even if Vaid were to be combined with Colby, the combination would still not result in the invention defined by claim 1. That is, as pointed out above, the quality of service that is described both in Colby and in Vaid is entirely different from level of service agreements signed with each customer.

That is, neither Colby nor Vaid even hints at evaluating current traffic for each customer and comparing that current traffic with the customer's unique SLA in order to control inbound traffic requests for that customer.

Hence, turning to the clear language of the claims, there is no teaching or suggestion of “ ... monitoring said outbound communications bandwidth usage by each customer traffic to determine a level of service being provided to each customer with respect to the agreed service level agreement in each service cycle time per unit of time; b) controlling a flow of incoming requests to each customer business activity application so as to guarantee a level of service previously agreed to said customer by queuing requests to said customer and by selectively dropping requests to said customer to guarantee the agreed service levels to said customer, wherein said controlling controls and guarantees each outbound link usage based service level agreement by controlling the flow of incoming requests to the at least one server.”

For the reasons stated above, the claimed invention is fully patentable over the cited references.

Further, the other prior art of record has been reviewed, but it too, even in combination with Colby and Vaid, fails to teach or suggest the claimed invention.

III. FORMAL MATTERS AND CONCLUSION

In view of the foregoing, Applicant submits that claims 1-27, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in

S/N 09/506,603

Docket: YO999-374

condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview. The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Assignee's Deposit Account No. 50-0510.

Date: _____

10/29/03

Respectfully Submitted,



Frederick E. Cooperrider

Reg. No. 36,769

McGinn & Gibb, PLLC

8321 Old Courthouse Road, Suite 200

Vienna, Virginia 22182

(703) 761-4100

Customer No. 21254